

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	WWLP Broadcasting, LLC
Negotiated Channel Election Arrangements	)	WGBH Educational Foundation
	)	NCA No. 20050210AFE
	)	
Second Periodic Review of the Commission's	)	MB Docket No. 03-15
Rules and Policies Affecting the Conversion to	)	
Digital Television	)	

To: Chief, Media Bureau

**OPPOSITION OF  
WGBH EDUCATIONAL FOUNDATION TO THE  
PETITION FOR RECONSIDERATION OF  
MT. MANSFIELD TELEVISION, INC.**

WGBH Educational Foundation, licensee of noncommercial educational station WGBY-TV and WGBY-DT, Springfield, Massachusetts ("WGBY"), respectfully files this Opposition to the Petition for Reconsideration ("petition") of Mt. Mansfield Television, Inc.,<sup>1</sup> licensee of WCAX-TV and permittee of WCAX-DT, Burlington, Vermont ("WCAX"), concerning the Commission's approval of the negotiated channel arrangement ("NCA") between WGBY and WWLP Broadcasting, LLC.

As described below, WGBY does not object to WCAX's proposed election of channel 22 for its post-transition operation, provided that WCAX adjusts its operating parameters to preserve WGBY's existing DTV service area. WCAX's petition, however, would retroactively condition approval of the WWLP-WGBY NCA on the acceptance of impermissible

---

<sup>1</sup> See Petition for Reconsideration of Mt. Mansfield Television, Inc., MB Docket No. 03-15 (filed July 8, 2005) ("Mt. Mansfield Petition").

interference to thousands of WGBY's viewers. If granted, that petition would deprive viewers in the Springfield market of the DTV service to which they have been accustomed since 2000.

**I. WCAX DOES NOT HAVE STANDING TO FILE A PETITION FOR RECONSIDERATION OF THE COMMISSION'S APPROVAL OF THE WWLP-WGBY NEGOTIATED CHANNEL ARRANGEMENT.**

As an initial matter, WCAX has no standing to file a "petition for reconsideration" of the Commission's approval of the WWLP-WGBY negotiated channel arrangement.<sup>2</sup> After WWLP properly notified the Commission of the NCA in its FCC Form 382 filing,<sup>3</sup> the Commission issued a Public Notice seeking comment on the NCA by March 21, 2005 and reply comment by March 28, 2005.<sup>4</sup> That Notice expressly announced that the NCA proposed WGBY's election of channel 22.<sup>5</sup> Based on the record before it, the Commission

---

<sup>2</sup> WCAX refers to the WWLP-WGBY NCA as "tentatively approved." In fact, that approval was not tentative. See NCA Order at ¶ 24 (announcing that the WWLP-WGBY NCA, among others, was "HEREBY APPROVED") (caps in original).

<sup>3</sup> See FCC Form 382 of WWLP Broadcasting, LLC, BFRECT-20050210AFE (filed Feb. 10, 2005).

<sup>4</sup> *First Round DTV Channel Election Issues – List of In-Core Channels Elected by Out-of-Core Stations Participating in Proposed Negotiated Channel Arrangements*, Public Notice, DA 05-655 (rel. March 11, 2005) ("To ensure that all interested parties have an opportunity to comment on the proposed NCAs for these stations, we hereby identify the channels these [out-of-core] stations propose for post-transition DTV operation in connection with the NCA").

<sup>5</sup> In claiming that "[i]t was not until the Commission released the [NCA Order] that it gave public notice of the DTV channel that is the subject of WGBY-TV's negotiated channel arrangement," it appears that WCAX is referring to an earlier Public Notice in which the Commission sought comment generally on all NCAs, as opposed to the above-described Public Notice in which the Commission specifically identified the in-core channels elected by out-of-core stations participating in NCAs, and sought further comment on such NCAs. See *DTV Channel Election Issues – Proposed Negotiated Channel Election Arrangements and Procedures for Filing Associated Pleadings*, Public Notice, DA 05-519 (rel. March 1, 2005).

issued an Order approving the NCA on June 8, 2005,<sup>6</sup> and it subsequently provided a tentative DTV channel designation of channel 22 for WGBY.<sup>7</sup> WCAX did not file its petition until July 7, 2005, over three months after close of the comment cycle.

Although WCAX reports that Industry Canada did not formally concur to WCAX's proposed channel 22 operation until June 16, 2005, WCAX states that the preceding negotiations between the International Bureau and Industry Canada involved "substantial time."<sup>8</sup> Accordingly, when the Commission sought comment on the WWLP-WGBY NCA in March 2005, WCAX was presumably already seeking Canadian concurrence for operation on channel 22. Yet WCAX has provided no explanation for its failure to provide timely comments within the timeframe established by the Commission.

In light of these procedural defects, WCAX's discussion of the various factors used by the Commission in "review and approval" of an NCA, and its allegation that such factors warrant reconsideration of the WWLP-WGBY NCA, are moot.<sup>9</sup> The Commission has already reviewed and approved the WWLP-WGBY NCA based on the record properly before it. Procedural grounds alone thus justify dismissal of WCAX's petition.

---

<sup>6</sup> *Negotiated Channel Election Arrangements*, Report and Order, 20 FCC Rcd. 10141 (2005) ("NCA Order").

<sup>7</sup> *DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections*, Public Notice, DA 05-1743, Attachment (rel. June 23, 2005).

<sup>8</sup> WCAX Petition at 4.

<sup>9</sup> *Id.* at 2 ("As the Bureau has made clear, negotiated channel arrangements are subject to Commission review and approval.").

## **II. GRANT OF WCAX'S PETITION WOULD UNJUSTLY DEPRIVE VIEWERS IN THE SPRINGFIELD MARKET OF CONTINUED ACCESS TO WGBY'S NONCOMMERCIAL EDUCATIONAL DTV SERVICE.**

WGBY, one of only seventeen stations in the U.S. with two out-of-core channels, has been a leader in the digital transition, operating full, licensed DTV facilities on its out-of-core channel 58 since March 2000. WGBY thus commenced full-service DTV operations more than three years before the applicable DTV construction deadline,<sup>10</sup> despite the knowledge that it would eventually have to relocate those facilities to a not-yet-identified in-core channel.<sup>11</sup> To ensure that its viewers would not lose access to its noncommercial service after the transition, WGBY conducted substantial and costly research to locate a channel that would allow it to provide continued replication coverage to the Springfield market. It identified channel 22 as an ideal candidate, and entered into successful negotiations with WWLP to elect that channel. WCAX's request to condition WGBY's election of channel 22 on the acceptance of harmful interference from WCAX's proposed co-channel operation would undo these efforts to provide continued access to noncommercial DTV service throughout the Springfield market.

First, in its petition, WCAX significantly underestimates the number of Springfield viewers who would lose access to WGBY-DT's service if WCAX were to operate on channel 22 at the proposed 443 kW ERP. In the pleading, WCAX states that its proposed operation would "result in interference to only 863 persons within the WGBY-TV service area," equating to a "0.04% increase in interference."<sup>12</sup> As WCAX correctly notes, a 0.04% increase in

---

<sup>10</sup> 47 C.F.R. § 73.624(d)(1)(iv) (specifying a DTV construction deadline of May 1, 2003 for noncommercial stations).

<sup>11</sup> Because its analog channel 57 is also out of the core spectrum, WGBY faced considerable uncertainty as to its post-transition channel assignment.

<sup>12</sup> WCAX Petition at 4.

interference (if calculated correctly) is “within the [0.1%] *de minimis* range deemed to be acceptable by the Commission.”<sup>13</sup> The engineering statement appended to WCAX’s petition, however, acknowledges that using the Commission’s accepted analysis for calculating channel election conflicts (*i.e.*, determination of a change in predicted interference), WCAX would impermissibly prevent some 3,204 persons, or 0.16% of WGBY’s baseline service population, from viewing WGBY-DT.<sup>14</sup> The Commission’s rules thus require WCAX to reduce its proposed operating parameters to bring the interference to a permissible (*i.e.*, less than 0.1%) level if it wishes to elect channel 22 in Round Two.<sup>15</sup>

Second, WCAX asks that WGBY’s coverage be even further reduced in the event that changes in the operating parameters of a Canadian station permit WCAX to increase power to 550 kW in the future.<sup>16</sup> WCAX’s engineering statement acknowledges that such operation would impermissibly prevent some 3,869 persons, or 0.19% of WGBY’s baseline service population, from viewing WGBY-DT.<sup>17</sup> It is not appropriate to seek such early approval of operations that are premised on a condition that does not yet exist. This request – which would

---

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> WCAX Petition, Statement of Hammett & Edison, at 2. WGBY has not had the opportunity to independently verify the Hammett & Edison calculations. It is thus possible that the increase in interference posed by the WCAX operation (443 kW) would be greater than 0.16%.

<sup>15</sup> See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279 (2004), at ¶ 60 (“*DTV Biennial Review R&O*”) (explaining procedures for stations that receive a conflict letter in Round Two).

<sup>16</sup> WCAX Petition at 5 n.8.

<sup>17</sup> *Id.*, Statement of Hammett & Edison, at 2.

further deprive WGBY's viewers of replication coverage while increasing WCAX's service area well beyond replication coverage – should thus be dismissed.<sup>18</sup>

Third, WCAX has not provided any evidence that it cannot reduce power or otherwise change its parameters to prevent the creation of impermissible interference to WGBY's viewers. Instead, WCAX appears to argue that because Industry Canada believes the 443 kW ERP operation to be acceptable,<sup>19</sup> the Commission should authorize that operation. The Commission, of course, should make its own determination consistent with the rules it has established for the channel election process.

Although operation at less than 443 kW ERP may cause WCAX to provide somewhat less than full replication coverage, that is no justification for depriving WGBY of the ability to deliver full replication coverage to its viewers. Indeed, because WCAX has not yet commenced over-the-air DTV operations, its viewers have not become accustomed to such service; in contrast, WGBY has provided DTV service throughout the Springfield market for over five years.<sup>20</sup> WGBY does not object to WCAX's election of channel 22 in Round Two, provided that WCAX is required, like other applicants, to protect WGBY's tentative DTV channel designation from impermissible interference.

---

<sup>18</sup> WCAX states that the proposed 443 kW ERP operation was “designed to achieve replication of its analog coverage.” WCAX Petition at 2.

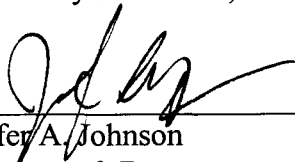
<sup>19</sup> Presumably, operations at less than 443 kW ERP would pose no international coordination issues.

<sup>20</sup> WCAX contends that the failure to grant its channel 22 proposal would delay the initiation of DTV service by “all five Burlington-Plattsburgh DMA stations”, but has provided no evidence to support this contention.

### CONCLUSION

WCAX did not comment on the WWLP-WGBY negotiated channel arrangement in the timeframe announced in March 2005 by the Commission; thus, it has no standing to object now. Moreover, grant of WCAX's petition would deprive thousands of viewers in Springfield of continued access to WGBY's DTV service. Accordingly, WGBY respectfully requests that the petition be dismissed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Johnson", is written over a horizontal line.

Jennifer A. Johnson  
COVINGTON & BURLING  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

*Counsel for WGBH Educational Foundation*

July 18, 2005

**CERTIFICATE OF SERVICE**

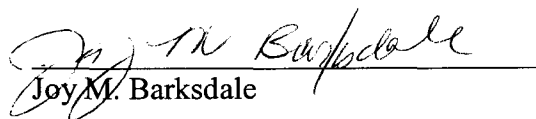
I, Joy M. Barksdale, a Paralegal Specialist at the law firm of Covington & Burling, do hereby certify that on this 18th day of July, 2005, I caused a copy of the foregoing "Opposition of WGBH Educational Foundation to the Petition for Reconsideration of Mt. Mansfield Television, Inc." to be sent by the method indicated below on the following persons:

William R. Richardson, Jr.  
Jack N. Goodman  
WILMER CUTLER PICKERING HALE AND DORR, LLP  
2445 M Street, N.W.  
Washington, D.C. 20037  
*Counsel for Mt. Mansfield Television, Inc.*

(by first-class mail and electronic mail)

Matthew S. DelNero  
COVINGTON & BURLING  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
*Counsel for WWLP Broadcasting, LLC*

(by hand delivery)

  
Joy M. Barksdale